

MINUTES
HOUSE HEALTH & WELFARE COMMITTEE

DATE: Tuesday, March 10, 2020

TIME: 9:00 A.M.

PLACE: Room EW20

MEMBERS: Chairman Wood, Vice Chairman Wagoner, Representatives Vander Woude, Gibbs, Blanksma, Kingsley, Zollinger, Christensen, Lickley, Remington, Chew, Rubel, Davis

**ABSENT/
EXCUSED:** None

GUESTS: Dr. Laura Lineberry, Elizabeth Criner, John C. Matunas, Linda Swanstrom, Jessica Oliver, Steve Bruce, and Dr. Kathleen Beaudry, ISDA; John Foster, OSP; Michael McGrane, IDHA Dental Hygienists; Kate Haas, Kestrel West; David Lehman, Primus Policy

Chairman Wood called the meeting to order at 9:01 a.m.

S 1305: **Kris Ellis**, Idaho Psychological Association, presented **S 1305**. Supervisors for prescribing psychology students, which are required in their second year, are hard to find. This legislation adds family practice physicians to the supervisors list. The requirement for specialized medication training, which does not exist for physicians, has been replaced with a minimum experience requirement of two years.

For the record, no one indicated their desire to testify.

MOTION: **Rep. Vander Woude** made a motion to send **S 1305** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Gibbs** will sponsor the bill on the floor.

S 1295: **Elizabeth Criner**, Idaho State Dental Association, presented **S 1295** to amend the Dental Practice Act in two sections. Language is added to assure telehealth dentistry is in accordance with both the community standard of care and the Telehealth Practice Act. Dentists are required to provide patients with licensure and contact information and advise them regarding the possible need for in-person care. The dentist has the option to provide a referral or instruct the patient to locate a dentist.

Dentists authorizing or performing corrective malposition procedures must do so in accordance with the community standard of care. Some Idahoans have experienced serious oral health issues with direct-to-consumer aligners when the dentist did not have adequate knowledge or images to determine what was going on below the gum line.

This legislation also ensures dentists cannot represent, contract with, or be employed by an entity which limits the patient's right to file a complaint with the Board of Dentistry.

Dr. Laura Lineberry, Idaho State Dental Association, testified **in support of S 1295**. In her practice Dr. Lineberry strives to keep up with rapid technological changes to assure the best possible patient care. Use of aligner treatments require the doctor and patient to agree on the appropriate plan. She described cases where the consumer's health was threatened due to improper fit, poor quality images, lack of x-rays, and no in-person exam. Clinical exams are more extensive, include the person's full health, and can reveal issues indicating the individual is not a good candidate for aligners. Consumers may not be able to contact the remote dentist or orthodontist directly to address issues. Full transparency and community standard of care are important for the care Idahoans deserve.

John Foster, Contract Lobbyist, Kestral West, Opportunities Solution Project, testified **in opposition to S 1295**. Requiring x-rays and an office visit before a person can avail themselves of teledentistry creates a barrier not in alignment with Idaho's low regulatory goal. Teledentistry providers are meeting a demand and providing free market opportunities. Alignments are less critical than extraction surgeries, which do not require prior x-rays or dentist visits.

Dr. Steve Bruce, Dentist, State Dental Association, testified **in support of S 1295**. When at a national meeting, he shared concern regarding the inability for a standard of care defense without an examination.

Dr. Blaine Leeds, Dentist, Nashville, TN, Teledentistry Practitioner in Nine States, testified **in opposition to S 1295**. He was the first dentist trained to do Invisalign paraligners. There are five teledental providers in Idaho. He described the three to six month process of minor orthodontic tooth movements using paraligners. Obtaining and returning the aligners comprise the majority of complaints.

Answering committee questions, **Dr. Leeds** said a very detailed medical history is required, along with a release form stating they have a regular dental team who has prescribed them as healthy. Upon receipt of their first aligners, the patients are encouraged to contact the support team to provide photos and feedback on the progression of their case. He speaks to his patients on a routine basis to discuss their progress. Any complaints are addressed as soon as possible. They use iTero scanners which are also used by board certified orthodontists for high definition images. Any patient can submit existing dental record information.

Dr. Leeds, answering further questions, stated **S 1295** requires patients have a referral relationship prior to starting any procedure. It also requires the patient submit their records, causing a delay and defeating the efficiency of teledentistry. Patients experiencing issues are re-scanned. Some consumers cannot and should not be treated.

Kate Haas, Smile Direct Club, testified **in opposition to S 1295**. Almost all of the Idaho teledentists contracting with Smile Direct Club have brick and mortar practices. The vague terminology creates interpretation issues for referring dentists. Referrals usually happen when a problem arises, not before a service occurs. An informed consent is already included in the Telehealth Access Act. Most problematic is the telehealth malposition requirements, including community standard of care, within the punitive section. Brick and mortar dentists use their knowledge to provide the appropriate treatment without any regulatory or Board of Dentistry intervention.

Ms. Haas, in response to committee questions, said the Board of Dentistry, as with other professional boards, provides oversight of licensure and public protection. According to her client, this is a market decision consumers are making after seeing their regular dentists.

David Lehman, Primus Policy Group, American Teledentistry Association, testified **in support of S 1295**. The Board of Dentistry has the clear statute authority to handle this issue and the Dental Hygienist Association wants to collaborate with the board. This is a reasonable approach to the issue and the committee needs to allow the telehealth statute, not legislation, to regulate the practice with adjudication by the regulatory board.

Dr. Kathleen Beaudry, Board Certified Periodontist, State Dental Association, testified **in support of S 1295**, sharing an example of her patient, who was not a good candidate, who used direct-to-consumer aligners, without a direct exam, no dentist or orthodontist information, and experienced severe issues as a consequence. The prescribing dentist needed to be better informed and have diagnostic radiographs. There could be few complaints because most patients do not know they have a problem until months or years after they undergo the process. This will better insure patients are more appropriately evaluated and not sold a harmful device.

MOTION:

Rep. Lickley made a motion to send **S 1295** to the floor with a **DO PASS** recommendation.

Michael McGrane, Idaho Dental Hygienist Association, testified **in support of S 1295**. This legislation provides patient protection and does not prevent teledentists. Hygienists see the results and the problems.

In closing remarks, **Elizabeth Criner** stated the legislation supports online telehealth models and assures patients who should not get aligners are protected. Dental records are readily attainable within five days and the patient can ask the online system to retrieve the records. A prescribing dentist's review will insure the oral health of the patient is right for this type of service.

Answering questions, **Ms. Criner** said the American Association of Dental Boards released guidance for this type of legislation for all states. (See attachment 1) Even the provider testifying today supports the AADB recommendation. (See attachment 2) Many border communities have dentists licensed in multiple states and all teledental rules respect cross-partner communities. The community standard of care is established by those within the profession.

Dr. Steve Bruce, Dentist, State Dental Association, was invited to answer a committee question. The standard of care is the care which would be provided by any prudent dentist in their community. The American Dental Association has no written standard of care for every procedure. If challenged, a court would determine the standard of care.

Answering a question, **Elizabeth Criner** stated the board is the authority for implementation and management.

SUBSTITUTE MOTION:

Rep. Remington made a substitute motion to send **S 1295** to General Orders.

AMENDED SUBSTITUTE MOTION:

Rep. Zollinger made an amended substitute motion to **HOLD S 1295** in committee.

UNANIMOUS CONSENT REQUEST:

Rep. Zollinger made a unanimous consent request to withdraw the amended substitute motion. There being no objection, the request was granted.

AMENDED SUBSTITUTE MOTION:

Rep. Zollinger made an amended substitute motion to **HOLD S 1295** in committee for time certain, Friday, March 13, 2020.

ROLL CALL VOTE: Roll call vote was requested. **Amended substitute motion failed by a vote of 6 AYE, 7 NAY. Voting in favor of the motion: Reps. Vander Woude, Blanksma, Kingsley, Zollinger, Christensen, Remington. Voting in opposition to the motion: Reps. Wood, Wagoner, Gibbs, Lickley, Chew, Rubel, Davis.**

ROLL CALL VOTE: Roll call vote was requested. **Substitute motion failed by a vote of 6 AYE, 7 NAY. Voting in favor of the motion: Reps. Vander Woude, Blanksma, Kingsley, Zollinger, Christensen, Remington. Voting in opposition to the motion: Reps. Wood, Wagoner, Gibbs, Lickley, Chew, Rubel, Davis.**

VOTE ON ORIGINAL MOTION: **Chairman Wood** called for a vote on the original motion to send **S 1295** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Reps. Blanksma, Christensen, Remington, and Kingsley** requested they be recorded as voting **NAY. Rep. Wagoner** will sponsor the bill on the floor.

ADJOURN: There being no further business to come before the committee, the meeting adjourned at 10:21 a.m.

Representative Wood
Chair

Irene Moore
Secretary